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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 09/479,549 | 01/07/00 | ACKLEY, JR. | E 2280.2470 |

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EXAMINER

WEINSTEIN, S

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1761

DATE MAILED: 04/06/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/479589

Applicant(s)

ACKLEY ET AL

Examiner

S WEINSTEIN

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-58 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-58 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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DETAILED ACTION

Restriction to one of the following inventions is required under 35 USC 121.

Group I: Claims 1-16 and 27-32 drawn to a method of printing edibles classifiable in class 426, subclass 383.

Group II: Claims 17-22, and 33-45 drawn to a-n apparatus for printing edibles classifiable in class 101.

Group III: Claim 23-26 drawn to an edible classifiable in class 426, subclass 87.

Group IV: Claims 47-58 drawn to a carrier bar for carrying the edibles.

The inventions are distinct, each from the other because: The apparatus of Group II and the apparatus of Group IV can be used in methods other than that recited in Group I. For example, the apparatus of Group II could be used to print images on inedible objects as well as edible objects. The apparatus of Group II could be used to print images on buttons, closure caps, decorative pins, etc. Similarly, the apparatus of Group IV could be used to transport such articles. The product of Group III can be made by methods other than that recited in Group I. For example, the edibles to be printed could remain stationary and one or more nozzles could be moved around the edibles or the edibles could be decorated by hand. Further, the carrier bar of Group IV can be used in apparatus other than that recited in Group II. For example, the carrier bar would not have to be used in a printing apparatus but could be used as a transfer device in any process/apparatus when a product is to be moved from one position to another.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art requiring separate searches as shown by their different classification restriction for examination purposes as indicated is proper.

In addition, if ^{applicants} elect either the method of Group I or the apparatus of Group II, applicants must elect from the following species requirement.

This application contains claims directed to the following patentably distinct species of the claimed invention: Species I, wherein the articles are held by differential pressure

Species II, wherein the articles are held by a retaining member

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention

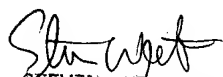
Any inquiry concerning this communication should be directed to MR. WEISTEIN at telephone number (703) 308-0650.

Weinstein/af

March 30, 2001

Corrected

April 4, 2001


STEVEN WEINSTEIN
PRIMARY EXAMINER
ART UNIT 132/761
4/6/01